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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ERIC WILTON BURTON,
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13 vs. Petitioner,
14 DIRECTOR, CALIFORNIA
15 DEPARTMENT OF CORRECTIONS
16 AND REHABILITATION,
17 Respondent.

CASE NO. 08CV0325-LAB (POR)
**ORDER RE: CERTIFICATE OF
APPEALABILITY**

18 The Court denied Burton's habeas petition on September 30, 2011. Since then,
19 Burton has filed a notice of appeal and an application for a certificate of appealability.

20 Burton is entitled to a certificate of appealability only if he "has made a substantial
21 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies
22 this standard by demonstrating that jurists of reason could disagree with the district court's
23 resolution of his constitutional claims or that jurists could conclude the issues presented are
24 adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322,
25 327 (2003). Burton doesn't have to show that he should prevail on the merits. "He has
26 already failed in that endeavor." *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000)
27 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). At the same time, the Court
28 shouldn't issue a COA to Burton as a matter of course. He "must prove 'something more

